

## **SB 262 (Water Compact) Litigation Update**

The Legislature passed SB 262 in late April, which ratified the water compact with the Confederated, Salish, and Kootenai Tribe (CSKT). Before the compact was transmitted to the Governor, the Flathead Joint Board of Control (FJBC), which is the joint board of operations for the Mission, Jacko, and Flathead Irrigation Districts, filed a lawsuit challenging the compact in Lake County. The FJBC claimed the compact grants immunity to the state and did not receive the required 2/3rds vote from the Legislature pursuant to Article II, section 18 of the Montana Constitution.<sup>1</sup> The FJBC requested an emergency temporary restraining order asking the court to prohibit the Governor from signing the compact and any state agency from implementing its provisions.

The FJBC named the entire 64<sup>th</sup> Legislature, the Speaker of the House, the President of the Senate, the State of Montana, the Governor, the Attorney General, and five individual representatives and senators as defendants in the case.

The Attorney General appeared on behalf of the defendants and filed a motion opposing the request for the temporary restraining order. The Attorney General also requested a change of venue to the First Judicial District Court in Helena. The Court issued its first order in May in which it denied both the FJBC's request for a temporary restraining order and the Attorney General's request for a change of venue.

The Attorney General's office filed a motion to dismiss the claims in early July, and the FJBC filed a motion opposing dismissal in early August. A reply brief from the Attorney General is due shortly.

At the request of the Attorney General, the FJBC amended its original complaint naming only the state as the defendant in the case. All other parties have been removed from the suit.

The case is currently proceeding before district court Judge Manley in Lake County.

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<sup>1</sup> The two provisions being challenged are: (1) the "waiver of immunity" language appearing in the implementation section on page 48 of the compact; and (2) the language providing immunity from suit to the members of the unitary management board on page 79 of the compact.